

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.936 of 2017

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Bishwanath Sah son of Late Ram Das Sah, Resident of Katoria, P.O. and P.S. Katoria, District- Banka.

... .. Appellant

Versus

1.Chandrika Pd. Sah son of Late Ram Das Sah, Resident of Katoria, P.O. and P.S. Katoria, District- Banka.

(Defendant 1st party) Respondent 1st party.

2. Arun Kumar son of Sri Ram Briksha Sah, Resident of Katoria, P.O. and P.S. Katoria, District- Banka.

(Defendant 2nd party) Respondent 2nd party.

3.Birendra Sah

4.Amrendra Sah

Both sons of Late Mahesh Sah

5.Smt. Veena Devi

6.Kiran Devi

7.Munni Devi

8.Anita Devi

All daughters of Late Mahesh Sah P.O. and P.S. Katoria, District- Banka.

(Defendant 3rd party) Respondent 3rd party.

9.Ranjeet Pd. Sah

10.Rajendra Pd. Sah

11.Sujendra Pd. Sah

12.Shiv Shankar Pd. Sah,

sons of Late Ambika Sah

13. Sangeeta Kumari daughter of Late Ambika Sah

14.Most Shushma Devi wife of Late Ambika Sah

Resident of Katoria P.O. and P.S. Katoria, District- Banka.

15.Gopal Sah

16.Rajesh Sah

17.Mundrika Sah

Resident of Katoria P.O. and P.S. Katoria, District- Banka.

(Defendant 4th party) Respondent 4th party.

... .. Respondents

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Appearance :

For the Appellant : Mr. Ramakant Sharma, Sr. Advocate

Mr. Rajesh Kumar, Advocate

For the Respondents : Mr. Sanchay Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

8 25-01-2023 This miscellaneous appeal has been filed for setting aside the order dated 04.08.2017 passed in Title Suit No. 174 of 2016 by learned Sub-Judge-IV, Banka whereby and whereunder



the prayer for grant of interim injunction restraining respondent no. 2 from disturbing the peaceful possession over the suit land of the plaintiff has been rejected.

2. The plaintiff-appellant has filed Title Suit No. 174 of 2016 for a declaration that the plaintiff is the absolute owner having all perfect right and title upon the suit land. The plaintiff claims that neither defendant 1st party nor defendant no. 2 of the defendant 2nd party and that the defendant 3rd party have got any right, title or interest over the said property. He claims his exclusive right, title and possession over the said property by virtue of a family arrangement. The plaintiff has further prayed for declaring that the sale deed no. 12354 dated 09.09.2016 was illegally created without any authority and power by Chandrika Prasad Sah, son of Late Ram Das Sah, the defendant no. 1 of the defendant 1st party in favour of Arun Kumar, son of Ram Briksha Sah, the defendant no. 2 of the defendant 2nd party, therefore, the said sale deed is null and void.

3. Learned senior counsel for the plaintiff-appellant submits that the plaintiff, defendant 1st party, defendant 3rd party and defendant 4th party are from their common ancestors namely Ram Das Sah. The seven sons of Ram Das Sah were in jointness at the time of death of said Ram Das Sah in the year 1971. The properties were acquired either in the name of Ram Das Sah or in



the name of some of his sons from the joint family funds. It is the case of the plaintiff that Schedule A property was purchased from the joint family funds through registered sale deed no. 21160 dated 20.12.1968 in the names of the eldest sons, Mahesh Sah and Chandrika Prasad Sah and as per amicable family settlement which took place in the year 1978, the same was subsequently allotted in the share of the plaintiff. The other brothers were allotted their respective shares and they all came in possession of their shares. Separate rent receipts were issued to them.

4. It is further case of the plaintiff that in the revisional survey operation the suit land was prepared in the name of the plaintiff within the full notice and knowledge of the parties but despite this position, the defendant no. 1, Chandrika Prasad Sah executed a sale deed of the suit land measuring 0.7.125 decimals in favour of Arun Kumar (defendant no. 2) vide registered sale deed no. 12354 dated 09.09.2016. It is stated that the defendant no. 2 has started laying down the foundation upon the suit land and there is serious apprehension of breach of peace. Thus, a temporary injunction was sought for.

5. Learned Senior Counsel for the plaintiff-appellant submits that the learned Sub-Judge-IV, Banka has rejected the prayer for grant of interim injunction without appreciating the materials available on the record. It is submitted that the learned



Sub-Judge-IV is not correct in saying that the plaintiff has failed to make out a prima-facie case for purpose of injunction.

6. On the other hand, learned counsel for respondent nos. 1 and 2 has contested the appeal and sought to defend the impugned order. Learned counsel submits that the Schedule A property was the exclusive property of the purchaser only, Ram Das Sah and his five sons including the appellant had no concern with the separate property of Mahesh Prasad Sah and Chandrika Prasad Sah. The property was purchased in the year 1968 and since then the same was in separate possession of Mahesh Prasad Sah and Chandrika Prasad Sah. Respondent no. 2 is a bonafide purchaser for consideration from respondent no. 1. It is his further contention that the father of the appellant died in the year 1971 whereas the appellant claims that the family arrangement took place in the year 1978. In his written statement filed in the court below, the defendant has stated that the case of the plaintiff that there had been partition through Panchnama dated 08.08.1978 is false and misleading, there was no partition among the seven brothers.

7. This Court has heard learned counsel for the parties and perused the impugned order. For purpose of considering the application for interim injunction, the learned court below has considered the fact that the defendant no. 2 has got a registered



sale deed in his favour from defendant no. 1 who has also got a sale deed of the said land in his name. The plaintiff has though questioned the capacity of defendant no. 1 to transfer the land but these facts would be proved only after the evidences would be led. Under these circumstances, the learned court below has held that the plaintiff has not made out a prima-facie case for purpose of injunction.

8. This Court agrees with the views expressed by the learned court below. This Court finds that the sale deed of the year 1968 is in favour of defendant no. 1 and the plaintiff-appellant has not produced any material at this stage to show a prima-facie case that there was an amicable settlement among seven brothers on 18.07.1978 in which this property was allotted in the share of the plaintiff. There being no prima-facie material to support the case of the plaintiff, this Court is of the considered opinion that no fault may be found in the impugned order.

9. This appeal has no merit. It is dismissed accordingly.

10. Let the suit proceed without being prejudiced by this order and be decided expeditiously.

(Rajeev Ranjan Prasad, J)

Tusharika/-
Sushma/-

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